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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76979 / January 27, 2016

ADMINISTRATIVE
PROCEEDING File No. 3-17070

In the Matter of

3C ADVISORS & ASSOCIATES, INC., STEPHEN JONES, and DAVID PROLMAN,

Respondents.

RESPONDENT STEPHEN JONES' OPPOSITION TO MOTION FOR SUMMARY DISPOSITION

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I. INTRODUCTION

In 2010, Stephen Jones ("Jones") brought his vast business experience and his uniformly respected brand to the formation of 3C Advisors & Associates, Inc. ("3C"). His vision for the company was simple—it would be a network of highly qualified professionals who would provide world-class valuation services, litigation consulting, and capital advisory services to clients of law firms, banks and accounting firms.

Although Jones anticipated that there would be a broker-dealer component to the capital advisory services, his plan was to secure licensed individuals to do this work within the network. As such, the role of 3C's capital advisory services was not that of a broker, but rather as a finder, connecting interested parties to one another. 3C and Jones did not act as securities brokers and Jones certainly did not see this as his role.

In bringing this action against 3C and Jones, the SEC has fundamentally misunderstood the company's structure and operations, including the allocation of fees in 3C's client agreements. There are many material facts in dispute. Summary disposition is inappropriate.

II. STATEMENT OF FACTS

Jones launched 3C Inc. (3C) in June 2010 to provide professional services to clients of law firms, banks and accounting firms. Jones Decl. at 2. Jones

wanted to create a network of subsidiary limited liability companies, specializing in valuation services, litigation consulting and capital advisory services. *Id.*

Before launching 3C, Jones performed valuation analysis, litigation support, and restructuring consulting for over two decades at several consulting firms, including Navigant Consulting and Mesirow Financial Advisor. SEC Ex. 45 at 20:23-43:21. Jones did not have a securities license because he did not perform broker-dealer services. SEC Ex. 45 at 34:2-6.

Jones never intended to perform broker services himself at 3C. While he envisioned that 3C would have a broker component, his intention was to associate 3C with licensed individuals or firms to do that work as a part of 3C's overall client package. SEC Ex. 45 at 60:13-25; Jones Decl. at 2. For this purpose, Jones interviewed licensed individuals and firms while referring out broker services in the meantime. SEC Ex. at 55:1-25 & 60:22-25; Jones Decl. at 9.

In June 2013, Jones hired David Prolman to take control of the capital advisory services arm of 3C. SEC Ex. 46 at 76:16-20. Prolman had thirty years of experience in the finance and business industry but was not a licensed broker. Jones Decl. at p. 12. Nor was Prolman hired to act as a broker for 3C. He introduced contacts he already knew in the industry to 3C clients and let them negotiate with each other. *Id.*; Exh. 46 at 20:12-21; Exh. 46 at 31:11-33:17. 3C was paid for identifying an investment source regardless of whether its client was

eventually funded. Jones Decl. at ¶ 74. Prolman also prepared a business plan for 3C's capital advisory services and prepared the company's engagement letters. SEC Ex. 45 at 90:12-24.

In late 2012, Jones met Kevin Denny (Denny) who operated several businesses. Jones Decl. at ¶ 9. Denny was formerly a licensed investment banker. *Id.* Jones hired Denny to be the Chief Operating Officer of 3C because of his experience and background. Jones Decl. at ¶ 22. Denny developed 3C's website, web content, a new corporate image and marketing materials. *Id.* at ¶ 9. He was then put in charge of 3C's "Sub-10" product, which was a consulting service to small firms. *Id.* at ¶¶10-11. In 2014, one of these firms fired Denny and 3C due to Denny's threats to extort them by reporting them to the Securities Exchange Commission. *Id.* at ¶ 14.[1]

Thereafter, 3C fired Denny for conversion of assets, breach of fiduciary duty, and related claims. *Id.* at ¶ 13. Denny then began to level his extortion threats at Jones. *Id.* at ¶ 14-20. Jones received harassing emails from Denny requesting payment of substantial amounts of money. *Id.* at¶¶ 16-20. Denny threatened to, among other things, "push the send button and deliver my findings to the proper authorities and regulatory agencies" (presumably, contact the SEC) if he

[1] Denny and Prolman also fell out with each other over outstanding personal loans that Denny had made to Prolman. Jones Decl. at ¶ 12. Denny wanted to fire Prolman. *Id.*

did not receive a settlement. *Id.* at ¶ 19. Denny had never suggested to Jones that 3C had any SEC compliance issues. *Id.* at ¶ 30.

3C had corporate counsel. They were engaged and did advise and designed, drafted and finalized the 3C Global Holding operating agreement. *Id.* at ¶ 31.

3C's counsel, through its tax and corporate partners, advised the 3C companies on all aspects of its operations and legal structure. 3C's counsel were intimate with all aspects of the operations of 3C Advisors & Associates, Inc. and 3C LLC. 3C's counsel even referred potential clients to 3C. *Id.* at ¶ 32.

Not once did any of 3C's counsel ever advise 3C that it was in violation of the securities laws. There is no email, no letter and no memo that advises 3C of any actual or potential running afoul of the securities laws. *Id.* at ¶ 33.

III. ARGUMENT

A. This Case is Not Appropriate for Summary Disposition as Genuine Issues of Material Fact Exist

Pursuant to Rule 250(b) of the Commission's Rules of Practice, a Hearing Officer may only grant a motion for summary disposition if there are no issues of material fact. 17 C.F.R. § 201.250(b). Jones and 3C dispute numerous facts presented by the Commission, rendering summary disposition wholly inappropriate.

B. 3C Did Not Willfully Violate Section 15(a) of the Exchange Act

The Commission cites a footnote in a Commission Opinion for the proposition that the definition of a broker "should be construed broadly and that exemptions from registration requirements that flow from [Section 3(a)(4)] should be 'narrowly drawn in order to promote both investor protection and the integrity of the brokerage community.'" *In re Wall,* Exchange Act Release No. 52467, 2005 WL 2291407, *3, n.9 (Commission Op. 19, 2005). In this case, however, the Commission has cast its net far too wide.

1. 3C did not "effect transactions in securities for the account of others"

The Exchange Act defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78C(a)(4)(A). The Commission argues "3C clearly 'effected' [] securities transactions—it achieved funding for at least one client, and earned a $90,000 performance fee in return." Commission's Motion (Mtn.) at 12.

This statement improperly attempts to define one word (effected) with use of another undefined word (achieved). The case of *S.E.C. v. M & A West, Inc.*, gives a clearer understanding of "effect." There, the District Court granted summary judgment *sua sponte* in favor of a defendant on the Commission's Section 15(a) claim, even though the undisputed facts established that the defendant facilitated and participated in reverse mergers. *M & A West, Inc.*, 2005 U.S. Dist. LEXIS

22452 (N.D. Cal. 2005). In particular, the defendant worked with the shareholders of a private company: (1) to identify "suitable public shell companies"; (2) to prepare documents for the reverse merger; and (3) to co-ordinate the parties to the reverse merger. *Id.* at *26. Upon successful completion of a reverse merger, the defendant received compensation in cash and securities. *Id.* The Court held that while the facts showed defendant "was in the business of facilitating securities transactions among other persons, the Commission cites no authority for the proposition that this equates to 'effecting transactions in securities for the account of others.'" *Id.* at *27.

Jones testified in his deposition, "we make introductions; that's what we do." Ex. 45 at 82:21-22. Jones clarified earlier in his deposition:

> Q: Did you envision the broker-dealer piece at 3C having a capital raise component?
>
> A: Well, I envisioned it.... [] But we needed a portfolio, and that portfolio of services would include the broker-dealer. What services we'd offer under it would be predicated by the individuals that I found and what they did.
>
> *Id.* at 60:15-24.

3C did in fact recruit and extensively consult with Kling Partners in 3C's development and planning stages as a consultant for compliance issues. Jones Decl. at ¶ 36. Carolyn Kling was certified to "conduct investment fiduciary assessments of investment steward, investment advisors and investment managers

to determine how efficient their policies and procedures are aligned with (CEFEX) Global Fiduciary Standards of Excellence." Jones Decl. at ¶ 35.

When customers wanted more than introductions to Qualified Sources of Capital, and to pay other than on an hourly basis, 3C referred them to Hunter Wise, a licensed and registered broker-dealer. *Id.*; SEC Exhs. 37 & 38. Jones testified to this in his deposition: "[I]f it was something where we thought they were a better fit that us at services, to actually go out and negotiate and represent the buyer or seller, we would refer that work off to, say, Hunter Wise, and we referred a number of projects." SEC Ex. 45 at 55:4-9.

Approximately twenty-eight per cent of 3C's opportunities were referred to Hunter Wise. Jones Decl. at ¶ 43. If 3C was acting as a broker-dealer, why would the company make such referrals? The actions of Jones and 3C are wholly at odds with the Commission's theories here.

A 3C client, Johnny Hill, confirmed Jones' deposition testimony that 3C made introductions. Hill was asked by the Commission if 3C had been involved with negotiating a contract with an investor, to which he replied, "Well, let's define involved. They gave me advice, but they didn't -- they didn't directly effect negotiations, to my knowledge." SEC Ex. 48 at 62:3-5. Hill saw 3C as a "money finder," a company that would introduce him to people who were interested in investing in his company and to help him get connected. Hill testified that 3C gave

him advice, "they reviewed proposals but did not do any negotiations. I did the negotiations directly." *Id.* at 59:24-25-60:1-2. Hill was also asked if he would "look to 3C to advise you about structure of the financing with JMC." *Id.* at 112:11-13. Hill's response was adamant: "No, no, no." *Id.*

In *Spicer v. Chicago Bd. Options Exchange, Inc.,* 1990 U.S. Dist. LEXIS 14469, the Court stated that buying or selling, or placing bids would be a means of effecting a transaction but that simply permitting others to effect transactions did not qualify. *Spicer*, 1990 U.S. Dist. LEXIS 14469 (N.D. Ill 1990) at *7.
3C simply brought people together in order to allow them to negotiate, 3C did not do that for them. "Merely bringing together the parties to transactions, even those involving the purchase and sale of securities, is not enough [to find a person acted as a broker]." *Apex Global Partners, Inc. v. Kaye/Bassman Int'l Corp.*, 2009 U.S. Dist. LEXIS 77679 at *11.

The Commission argues that the firm "developed its own base of potential capital sources who could invest with the customers" and refers to Prolman's deposition testimony. Mtn. at 13. This is an exaggeration of what Prolman stated. There was no active development of capital sources. Prolman drew on sources he already knew from his thirty years in the industry. His actual testimony was:

> Q: How would you identify potential capital sources that would be interested in a particular client?
>
> A: They were capital sources I knew from my marketing or capital sources

referred to me by those capital sources as being a better fit for the introduction or through an intermediary such as an attorney or other people just work on introductions out in the marketplace for funds, for institutional funds.

Exh. 46 at 20:12-21.

The Commission further mischaracterizes the extent of 3C's involvement in what took place after introductions were made, by stating "3C was involved in negotiations between its customers (the issuers) and potential sources of capital (the investors), and opined on the merits of the investments." Mtn. at 13. Prolman's deposition testimony demonstrates the Commission's mischaracterization:

Q: Did you have any role in helping -- in advising the client regarding what type of capital to seek?

A: No, the client pretty much would say I want debt or not debt.

Q: After -- after the teaser was prepared and disseminated to a potential capital source, what would be the next steps?

A: If they were interested in pursuing an additional discussion, then I would introduce them to the client. And if the client required an NDA -- a nondisclosure agreement -- the client would do that with the source and then give them access through whatever means they were using to get additional information. If they didn't require the NDA, then the information just went directly to the them.

Q: What would -- how would the introduction be made? Logistically how would the introduction –

A: Of the –

Q: Client.

A: -- source to the client?

Q: Right.

A: Usually a simple email introducing the two parties in an email: Mr. Client, this is Mr. Source. He's interested in finding an NDA. Mr. Source, this is our client. I introduce you two and –

Q: What would your role be after the -- after that introduction was made?

A: I might set up an appointment or time for an introductory phone call that they would get on and sometimes I would listen in, sometimes I was not part of that.

Q: Would you ever participate in those calls beyond listening in?

A: Only one time did I clarify something on a question that I can ever recall.

Q: Can you describe that?

A: It had to do with J.W. Hill and his projected closing balance sheet and the placekeeper number for the seller's equity, the clarification that that was a placekeeper clarification.

Q: Why was it that you needed to do that clarification?

A: Mr. Hill didn't understand the question.

Exh. 46 at 31:11-33:17.

Prolman further testified that he did not provide debt opinions. SEC Ex. 46 at 76:4-5.

Any negotiation assistance or other services by 3C were generated in and from the ***non-capital advisory service components of the company***, for which 3C

would be paid ***regardless of whether the client ever received funding***. Jones Decl. at ¶ 73.

The Commission relies heavily on the authority of *SEC v. Hansen*, 1984 U.S. Dist. LEXIS 17835 (S.D. N.Y. 1984). However, *Hansen* is distinguishable. In that case, defendant Hansen offered interests in an oil company to the public through the use of offering sheets and other written and oral representations. Hansen frequently prepared letters on his company's stationery which extolled the virtues of those interests. Hansen at *5-7. He further "placed advertisements in newspapers, sponsored seminars and social events, and used gifts, bumper stickers and other promotional items to induce investors to purchase interests in the VOC programs." *Id.* Hansen also participated in a financial symposium at the New York City Coliseum called "The Money Show" at which he promoted the VOC programs. *Id.*

3C did not aggressively market any particular kind of securities. Besides a general and educational power point and information on 3C's website, there was no placing of advertisements or the type of marketing that the defendant in *Hansen* pursued. Ex. 45 at pp. 81-82. The Commission states that 3C "prepared marketing books and teaser summaries with details about the customer and the customer's desired funding that it sent to potential funding sources." Mtn. at 13. This again is inaccurate. It was the client's responsibility to produce these materials. SEC Ex.

45 at 84:22-25-85:1-8. 3C's involvement was limited to editing the material with regard to aesthetics, such as layout, and general industry information. SEC Ex. 45 at 85:1-15. 3C disseminated only one or two-page "no-name teasers" to those of Prolman's contacts they thought would be interested. *Id.* at 85:21-22. If any of them showed an interest, Prolman would send them a non-disclosure agreement to sign and then 3C would "step out" of the process. *Id.* at 85:20-25.

Additionally, in the *Hansen* case, defendant "hired several individuals, inexperienced in both securities and oil and gas development, who offered and sold interests in the VOC programs by mailing out written materials prepared by Hansen." *Hansen* at *5-7. He "provided those employees with a prepared script and directed them to telephone prospective investors who had responded to Hansen's newspaper advertisements or other solicitations." *Hansen* at *5-7. Jones actively interviewed only with licensed brokers or broker firms with whom 3C would associate.

"During the relevant period, Hansen orally represented to prospective investors that they would receive large returns on any capital invested in the VOC programs." *Hansen* at *5-7. 3C made no guarantees with regard to any specific stocks.

2. 3C is a Finder

3C introduced investors to their clients, and then allowed the two sides to either reach a deal between themselves, or not. 3C was paid a percentage fee for *identifying* a source of capital. Jones Decl. at ¶ 63. They were also paid either a flat fee or hours times rates for non-capital advisory work. "[A] finder finds potential buyers or sellers, stimulates their interest, and brings parties together, while a broker brings the parties to an agreement on particular terms." *Jones v. Whelan*, No. 99 Civ. 11743, 2002 U.S. Dist. LEXIS 5403, 2002 WL 485729, at *7 (S.D.N.Y. Mar. 29, 2002) (citing *Train v. Ardshiel Assocs., Inc.*, 635 F. Supp. 274, 279 (S.D.N.Y. 1986) ("Finders find potential buyers or sellers, stimulate interest and bring parties together. Brokers bring the parties to an agreement on particular terms."), *aff'd*, 805 F.2d 391 (2d Cir. 1986))); *Warshay v. Guinness PLC*, 750 F. Supp. 628, 636 (S.D.N.Y. 1990) ("[F]inders, unlike brokers, do not play a role in the negotiation, drafting and signing of a purchase agreement and closing documents."), *aff'd*, 935 F.2d 1278 (2d Cir. 1991);

Another instructive case regarding the distinction between a finder and a broker is *Ne. Gen. Corp. v. Wellington Adver., Inc.*, 82 N.Y.2d 158 (1993) wherein the Court states, "A finder is not a broker, although they perform some related functions. . . . The finder is required to introduce and bring the parties together, without any obligation or power to negotiate the transaction, in order to earn the

finder's fee. While a broker performs that same introduction task, the broker must ordinarily also bring the parties to an agreement." *Ne Gen. Corp.* at 162-163.

3C was under no obligation to "bring the parties to an agreement" and were paid even if no agreement transpired. They were not involved in the negotiation of the terms of the agreement between the parties thereafter.

"The distinction between a finder and a broker, however, remains largely unexplored, and both the case law and the Commission's informal, 'no-action' letter advice is highly dependent upon the facts of a particular arrangement." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1336-1337. Here, genuine issues of material fact exist between the parties about 3C's level of participation in the transactions between its clients and potential investors and fee-based payments. Summary disposition may not involve the weighing of evidence. *Salamon v. Teleplus Enters.*, 2008 U.S. Dist. LEXIS 43112 at *27-28. The Commission's motion must be denied.

C. Jones Did Not Aid and Abet Any Violations of 3C

In order to prove its allegation that Jones aided and abetted 3C's Violation of Section 15(a), the Commission must show: (1) the existence of an independent primary violation; (2) the aider and abettor substantially assisted in the accomplishment of the primary violation; and (3) the aider and abettor knew or recklessly disregarded "that his or her role was part of an overall activity that was

improper." *In re Spring Hill Capital Markets, LLC*, Initial Decision Release No. 919, 2015 SEC LEXIS 4895 at *36 (Nov. 30, 2015).

First, 3C did not violate Section 15(a), as discussed above. There is no primary violation.

Second, Jones did not act as a broker. Rather, as discussed above, he was at best a finder who merely introduced investors to their clients and were paid regardless of whether those introductions ever resulted in funding.

Third, the Commission states that Jones knew he and Prolman were acting as brokers or that it should have been so obvious that they were acting as such that they must have known. *See In re ZPR Investment Mgmt., Inc.*, Initial Decision Release No. 602, 2014 WL 2191006, at *44 (May 27, 2014) (Recklessness is defined as "an extreme departure from the standards of ordinary care," (*Hatfield*, 2014 WL 6850921, at *7), and is present when "the danger was either known to the defendant or so obvious that the defendant must have been aware of it.)

In support of this third argument, the Commission states that Jones "drafted a business plan that identified other broker-dealer firms as competitors." As Jones testified, the vision for 3C was to eventually have a broker-dealer component but that they had to get licensed individuals on board first. SEC Ex. 45 at 60:13-25; Jones Decl. at ¶ 3-5. The business plan was based on that vision. Jones Decl. at ¶¶

39, 51. In the meantime, 3C referred out to other broker-dealers when necessary. *Id.* at ¶ 42.

Additionally, Prolman assured Jones that the engagement letters had been reviewed by lawyers and were designed for finding sources of capital. Jones Decl. at ¶ 58.

The Commission's evidence is heavy as to Prolman, but lacking as to Jones. As to Jones, the motion must be denied.

D. Jones Did Not "Cause" 3C's Violation of Section 15(a)

Under this allegation, the Commission must show: (1) a primary violation occurred; (2) an act or omission by the respondent contributed to that violation; and (3) the respondent knew or should have known that his or her conduct would contribute to the violation. *See In re Gateway Int'l Holdings, Inc.*, S.E.C. Release No. 53907, 2006 WL 1506286, at *8 (May 31, 2006) (Commission Op.)

As discussed above, 3C did not violate section 15(a), thus the first element is not satisfied.

As to the second element, Jones was primarily responsible for the non-capital advisory services of 3C. Jones Decl. at ¶ 40 ("My primary responsibilities were litigation services and some operational engagements."). The capital advisory services launched only *after* Prolman was hired. All of the engagement letters used by 3C were brought to the company by Prolman. And, Prolman told

Jones these engagement letters had been approved by lawyers and were designed for finding capital sources.

Even if the Commission believes Prolman "caused" the violations, this does not mean that Jones was also to blame. The Commission may have a compelling case that Prolman "caused" 3C's violations, but the evidence is fatally lacking as to Jones.

IV. THE RELIEF REQUESTED BY THE COMMISSION IS NOT IN THE PUBLIC INTEREST

None of the relief requested by the Commission is justified under the facts presented here. These "facts" are mischaracterizations of the services 3C provided, the roles that Jones played in 3C and the way the company was compensated. The Commission has added its own level of assumptions and interpretations to those mischaracterized facts. As such, Jones and 3C dispute the Commission's rendition of the facts and argue that this case is not appropriate for summary disposition or determination of the level of relief that would be appropriate.

3C is not engaging in broker activity. There is no need for a cease and desist order. A permanent bar would unfairly prevent Jones from pursuing his desire to become a licensed broker and lay waste to the money he has already paid in the past for materials. *Id.* An industry-wide collateral ban on Jones would effectively rob him of a lifelong career as a testifying expert witness.

Jones is a leader, educator and volunteer in the business industry. His work is of the highest standard and his integrity is well known in Southern California. He has assisted courts, judges, businesses, organizations, nonprofits, and community based programs. To ban him from engaging in the work he does, because of something he did not do, or is suspected to have done, would be a gross injustice.

Finally, the Commission requests that 3C and Jones disgorge $160,000, an amount that they have miscalculated. Jones Decl. at ¶ 44. Moreover, any civil penalties are unjustified, especially as to Jones who did not head the capital advisory services section of 3C.

IV. CONCLUSION

There are many disputed issues of fact in this case. The Commission's motion for summary disposition should be DENIED.

Dated: May 20, 2016

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